

Judge Riley, cont.

Alumni Association, and a member of the Indianapolis Rotary Club.

She also has extensive international legal experience. In 2008, she co-founded the Legal Aid Centre of Eldoret, Kenya (LACE), which provides legal access to justice in the AMPATH medical center for its HIV/AIDS patients.

In 2011, Judge Riley traveled with the Washington, D.C.-based International Judicial Academy to The Hague, Netherlands, to observe the International Criminal Court and two International Criminal Tribunals that are hearing cases from Sierra Leone and the former Yugoslavia.

In 2012 she participated in the 3rd Sino-U.S. Law Conference at the National Judges College of the People's Republic of China, which oversees all aspects of that country's judicial training, placement and promotion.

In 2013, she lectured on judicial ethics at the Justice Academy of Turkey and in 2014 joined an Indiana University team of legal observers at the U.S. detention facility at Guantanamo Bay, Cuba.

Judge Riley is the mother of two sons. She was retained on the Court by election in 1996 and 2006 and serves as presiding judge of the court's Fourth District.

Judge Robb, cont.

diana State Bar Foundation and a Senior Distinguished Fellow of the Indianapolis Bar Foundation. She is a frequent speaker on legal topics for attorneys, other judges, and professional, civic and community organizations.

Judge Robb was Founding Chair of Governor Bowen's Commission on the Status of Women; was a recipient of a 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University to honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; the 2006 Tippecanoe County YWCA Salute to Women "Women of Distinction" Award; the 2007 Warren G. Harding High School, Warren, Ohio, Distinguished Alumni

Award; the 2010 Indiana University Alumni Association President's Award, a 2010 Indiana Lawyer Distinguished Barrister Award, the 2011 Indianapolis Bar Association Women and the Law Committee's Antoinette Dakin Leach Award and the 2011 David Hamacher Award from the Appellate Practice Section of the Indiana State Bar Association.

Judge Robb chairs the Supreme Court Task Force on Family Courts and is involved in several projects to benefit the Indiana legal system. She also chaired the Supreme Court task force for the development of Trial Court Local Rules, has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest on Lawyer Trust Account) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and the Federal Advisory Committee for the Expediting of Federal Litigation.

Judge Robb authored "Reflections of Baseball, Life and the Law" in the Indiana State Bar Association's journal, *Res Gestae* and "Running Bases, Winning Cases: Why the Grand Old Game of Baseball is like the legal profession" in the ABA's journal. She also authored a chapter on Supreme Court Justice Leonard Hackney in, *Indiana Supreme Court Justices*, and co-authored a chapter, "From Juvenile Courts to Family Courts," in *Essays on Indiana Legal History*.

In addition, she serves on the ABA Committee that accredits law schools and chaired the 2010 ABA's Appellate Judges Council-Appellate Judges Education Institute's national Summit for Judges, lawyers and Staff attorneys. Judge Robb is an elected member of the American Law Institute (ALI).

Judge Robb was retained on the Court of Appeals in 2000 and 2010, is married to a professor at Purdue University. Their son, a graduate of the United States Naval Academy, is a lieutenant commander on active duty in the United States Navy.

Attorneys, from p. 2

Commercial Law League of America. Fred is Vice President of Indiana NORML and is President of Indiana Republicans Against Marijuana Prohibition.

Justice, quoted

The complete independence of the courts of justice is peculiarly essential in a limited Constitution.

- *Alexander Hamilton, Federalist 78*

It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each.

- *Chief Justice John Marshall*

Whatever disagreement there may be as to the scope of the phrase "due process of law" there can be no doubt that it embraces the fundamental conception of a fair trial, with opportunity to be heard.

- *Justice Oliver Wendell Holmes, Jr.*

The ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it.

- *Justice Felix Frankfurter*

Law matters, because it keeps us safe, because it protects our most fundamental rights and freedoms, and because it is the foundation of our democracy.

- *Justice Elena Kagan*

Most high courts in other nations do not have discretion, such as we enjoy, in selecting the cases that the high court reviews. Our court is virtually alone in the amount of discretion it has.

- *Justice Sandra Day O'Connor*

Restriction on free thought and free speech is the most dangerous of all subversions. It is the one un-American act that could most easily defeat us.

- *Justice Thurgood Marshall*

The job of a judge is to apply the law. And so it's not the heart that compels conclusions in cases. It's the law. The judge applies the law to the facts before that judge.

- *Justice Sonia Sotomayor*

The day you see a camera come into our courtroom, it's going to roll over my dead body.

- *Justice David Souter*

SYNOPSIS

In 2012, Faye Warfield, Faye's daughter, Keyotta Warfield, and Keyotta's husband and daughter lived together in Faye's residence, located in Indianapolis. When the house sustained hail damage to the roof, Faye filed a claim against her home owner's insurance policy with Liberty Mutual Insurance Company to pay for the damage to the roof.

Eric Albright, a Liberty Mutual adjuster, requested Jim Dorey to contact the Warfields about the roof damage. Dorey is an independent insurance adjuster and has worked with insurance companies for many years. Dorey applied for a general contractor's license on December 12, 2012, which he received March 1, 2013. As part of the licensing application, Dorey provided evidence that he was bonded and insured. At the time of Albright's phone call, Dorey was on Liberty Mutual's list of preferred contractors. Albright instructed him to contact Faye's daughter, Keyotta, because Faye "was older and [Keyotta] was going to represent her."

On December 16, 2012, Dorey met with Keyotta and Keyotta's husband at Faye's residence. Faye was not present. Keyotta texted her mother that Dorey had arrived but Faye "said she could not get there right now and [Keyotta] could get the information."

During the meeting, Keyotta and Dorey discussed the work to be performed, and they picked out the colors for the shingles and the gutters. Dorey presented Keyotta with the roofing contract from JRD Construction Services, owned by Dorey. The contract identified Faye as the customer, specified the roofing work to be done and materials to be used, the price for the work, and was signed by Keyotta and Dorey. Keyotta provided Faye with a copy of the contract later that day.

Keyotta also mentioned that the fireplace was in bad condition and inquired about rebuilding it. Dorey informed her that he could do the work but that rebuilding the fireplace would have to be completed prior to the roof work as otherwise the new shingles could be damaged. He explained that while Liberty Mutual would pay for the

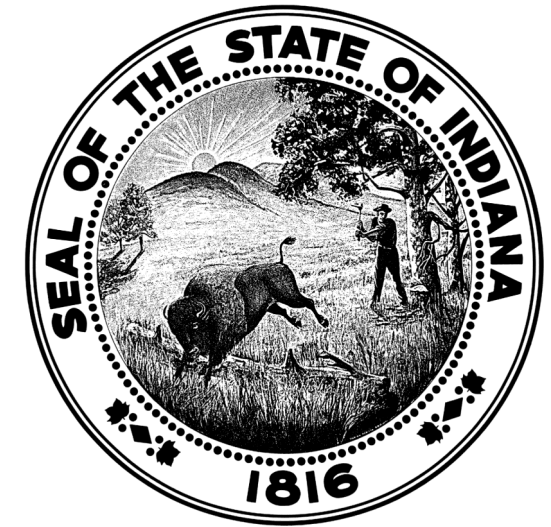
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Court of Appeals of Indiana

Hearing oral argument at

Wabash College

Thursday, April 28, 2016 @ 1 p.m.



Warfield v. Dorey

49A02-1503-PL-164

On Appeal from Marion Superior Court

The Honorable Robert Altice, Jr., Judge

Indiana Bicentennial 1816-2016

Synopsis, cont.

roofing work, the work on the fireplace would not be covered by the insurance company and would have to be paid for separately.

Keyotta verbally agreed to pay the price for the fireplace rebuild. Subsequent to the meeting, Dorey dropped off brick samples for the work on the fireplace and Keyotta picked out a color. Dorey added the fireplace rebuild to the contract, but did not ask Keyotta to initial or sign the addition. Keyotta later confirmed that Faye was “fine” with the chosen colors for the shingles and gutters.

Because of bad weather, Dorey did not commence the roofing work until July of 2013. He did not obtain a permit for the work, but did provide a notification to be posted on the Warfields’ front door. While tearing off the old shingles, Dorey discovered that the roof’s decking was in bad shape and needed to be replaced. After contacting Liberty Mutual, the insurance company authorized the replacement of the decking. Dorey added this additional work to the contract but did not ask Keyotta to initial or sign the addition.

Also, during the replacement of the decking, Dorey attempted to “put a new fan in because the fan that was there was never connected.” Faye became distraught because he “threw a perfectly good fan down on the ground.” The Warfields refused to replace the old fan, so Dorey cleaned it up and re-installed it on the roof “the way [he] found it.”

At the end of a job, Dorey typically meets with the customer to finalize the contract and to endorse any checks from the insurance company, if needed. Despite Dorey’s attempts to schedule a meeting, the Warfields did not meet with him, nor did they notify him about any defective work that needed to be cured. Although Liberty Mutual paid for the work with checks made out to Faye, Faye never endorsed the checks nor did the Warfields pay for any of the work to the roof or fireplace.

On Oct. 4, 2013, Dorey filed his Complaint, asserting breach of contract and unjust enrichment. The Warfields filed an Answer *pro se*. On Dec. 31, 2013, Dorey filed a motion for summary judgment, designation of evidence, and memorandum in

support of his motion

On March 13, 2014, the trial court conducted a hearing on Dorey’s motion for summary judgment and subsequently granted the motion the following day. On April 10, 2014, the Warfields filed a notice of appeal with the Indiana Court of Appeals. Four days later, the Warfields, represented by counsel, filed a motion to correct error, contending that Dorey had failed to provide the trial court with a contract signed by Nicole Warfield or Faye Warfield. On May 28, 2014, during the hearing on the Warfields’ motion to correct error, it was established that Faye’s daughter is legally known as Keyotta Nicole Warfield. The trial court denied the motion to correct error.

Nonetheless, on July 23, 2014, the trial court vacated the summary judgment and granted Dorey 10 days to amend his Complaint. Dorey timely filed an Amended Complaint and the Warfields subsequently dismissed their appeal. On Oct. 20, 2014, the Warfields filed their Answer and Counterclaims, alleging various violations of the Indiana Home Improvement Contract Act and asserting that Dorey’s lawsuit was frivolous. On Jan. 29, 2015, the trial court conducted a bench trial and entered judgment in favor of Dorey on Feb. 19, 2015, concluding in pertinent part

While the [c]ourt is aware that there are some deficiencies in the signed contract in this case; that written notice of the right to cancel was not provided (although there are some cancellation provisions in the contract); and that [Dorey] may not have obtained the proper permits (although he did post a “notification” on the Warfields’ door); [the Warfields] certainly received the benefits of [Dorey’s] services. They received a new roof with new decking and a rebuilt fireplace. [The Warfields] never made any complaints regarding the condition of the work. In fact, both of the Warfields testified that they still have no complaints about the workmanship. To void the contract would be unequitable at this point in time. [The Warfields] have not been damaged by any failures of [Dorey] to comply with any of the provisions of the Home Improvement Contract Act.



Attorneys for the Parties

For the Appellant

Mr. Sandy Leviticus Bryant grew up in Indianapolis, IN and attended Emmerich Manual High School. He attended Indiana University and received a Bachelor of Science in Business degree. Mr. Bryant attended Law School at Indiana University in Indianapolis. He graduated in 1977.

Mr. Bryant took the bar exam while a third year law student. Immediately after graduation, he was sworn in as a member to the Indiana Bar. Mr. Bryant is also admitted to practice in the United States District Court for the Southern District of Indiana.

Mr. Bryant began a private practice in Indianapolis. Mr. Bryant also was a public defender in the Marion County Municipal and Superior Courts from 1978 through 1990.

Mr. Bryant has continued his private practice and primarily concentrates on Civil Litigation. Mr. Bryant is a member of the Marion County Bar Association, Indiana Trial Lawyers Association, and the American Association of Justice.

Mr. Bryant raises and shows Arabian Horses when he is not practicing law.

For the Appellee

Fred Pfenninger grew up in New Castle and graduated from Chrysler High School. In 1967 he graduated from Indiana University with a B.A. in Political Science, where he was President of Beta Theta Pi, President of the IU Young Republicans and President of Crisis Biology, IU’s environmental group.

Fred graduated from the University of Michigan Law School in 1974 and from the Harvard Business School in 1977. He analyzed companies Eli Lilly & Co. might want to buy as a Diversification Analyst after HBS. Fred worked for Elrod, Elrod & Mascher and Rubin & Levin. He was previously Of Counsel in the Creditors’ Rights Department at Barnes & Thornburg before forming his own firm Pfenninger & Associates which concentrates in Commercial Collections and Creditors Rights.

Fred was board certified in Creditors’ Rights for over 10 years, has been named a Super Lawyer in Creditors’ Rights more than once, and has been on the faculty of over 30 seminars on collection law topics.

He is a former President of the Indiana Creditors Bar Association and is the Chairman of the Midwest Region of the

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Today’s Panel of Judges



**The Honorable
James S. Kirsch**

Marion County

James S. Kirsch was appointed to the Court of Appeals in 1994, was retained by election in 1996 and 2006 and served as Chief Judge from 2004-2007. He also has served as a state trial court judge and has extensive national and international teaching experience.

A native of Indianapolis, Judge Kirsch graduated from Indiana University School of Law-Indianapolis (J.D., cum laude) and Butler University (B.A. with honors).

He served as Judge of the Marion Superior Court from 1988 to 1994 and as Presiding Judge of the Court in 1992. From 1974-1988, he practiced law with the firm of Kroger, Gardis & Regas in the areas of commercial and business litigation and served as managing partner of the firm.

Since 1990, Judge Kirsch has held an appointment as Visiting Professor of Law and Management at the Krannert Graduate School of Management at Purdue University.

He has taught law in 21 countries on four continents and currently holds university-level faculty appointments in Germany, Hungary and the Netherlands.

Judge Kirsch is also committed to continuing legal education and has served on the faculty of more than 200 CLE programs. In 1990, the Indianapolis Bar Association presented him with its highest award, the Honorable Paul H. Buchanan Award of Excellence.

Judge Kirsch also has deep ties to the Indiana State Bar Foundation, the Indianapolis Bar Association and Bar Foundation and to community organizations that include the United Way of Central Indiana, the Indianapolis Urban League, the Legal Aid Society of Indianapolis and the Stanley K. Lacey Leadership Foundation.

Judge Kirsch and his wife, Jan, have two children.



**The Honorable
Patricia A. Riley**

Jasper County

Patricia A. Riley was named to the Court of Appeals of Indiana by Governor Evan Bayh in January of 1994. A native of Rensselaer, IN, Judge Riley earned her bachelor’s degree from Indiana University-Bloomington in 1971 and her law degree from the Indiana University School of Law-Indianapolis in 1974.

Early in her career she served as a Deputy Prosecutor in Marion County and a public defender in Marion and Jasper counties before entering into private practice in Jasper County. She served as a judge of the Jasper Superior Court from 1990 to 1993. She is a former associate professor at St. Joseph’s College in Rensselaer and currently an adjunct professor at the Indiana University School of Law-Indianapolis.

Judge Riley’s legal memberships include the Indianapolis Bar Association, the Marion County Bar Association, and the Indiana State Bar Association, including co-chair of the ISBA’s Racial Diversity in the Profession Section; member, Women in the Law Committee; and member, Committee on Improvements in the Judicial System.

Judge Riley is the former chair of the Appellate Practice Section of the American Bar Association, and a member of the ABA’s Judicial Division International Courts Committee. She is a member of the Indiana Judges Association and the Board of Directors of the National Association of Women Judges.

Judge Riley’s civic associations include being on the Board of Directors of the Greater Indianapolis Health Foundation, Board of Directors of Global Peace Initiatives, Board of Directors and Treasurer of the Indiana University School of Law-Indianapolis

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**The Honorable
Margret G. Robb**

Tippecanoe County

Margret G. Robb was appointed to the Court of Appeals of Indiana in July 1998 by Governor Frank O’Bannon. She holds a B.S. and an M.S. in Business Economics from Purdue University, a Magna Cum Laude J.D. from Indiana University Robert H. McKinney School of Law and is a graduate of the Graduate Program for Indiana Judges. In 2011 she began a three year term as chief judge; the first woman to hold that position in the Court’s more than 100 year history.

Prior to her appointment to the Court, Judge Robb was, for 20 years, engaged in the general practice of law in Lafayette, and served as a Chapter 11, 12 and a standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana. She was a registered family and civil mediator and served as a Tippecanoe County Deputy Public Defender.

She has been an officer of the Indiana State Bar Association, the Fellows of the Indiana State Bar Foundation, Tippecanoe County Bar Association, National Association of Women Judges, the Indiana University School of Law-Indianapolis Alumni Association and the Bankruptcy Section of the Indiana State Bar Association.

She has also been a Board member of the Appellate Judges Council of the American Bar Association, the Indianapolis Bar Association, the Indianapolis Bar Foundation, the Senior Council Section of the Indianapolis Bar Association, the Appellate Practice Section of the Indiana State Bar Association and the Appellate Judges Education Institute.

She was the moderator for the 2005-2006 and Chair for the 2006-2007 Indianapolis Bar Association’s Bar Leader Series, and is a member of the American Bar Foundation, American Judicature Society, a Master Fellow of the In-

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